

DEPARTMENT OF THE ARMY
Wilmington District, Corps of Engineers
Post Office Box 1890
Wilmington, North Carolina 28402-1890

Action ID No. 200320450

March 26, 2004

PUBLIC NOTICE

Patrick O'Neal, Chatham Development, LLC, 211 Chancellors Ridge Drive, Durham, North Carolina, 27713, has applied for a Department of the Army (DA) after-the-fact permit TO PLACE FILL MATERIAL INTO 168 LINEAR FEET OF STREAM CHANNEL AND 0.12 ACRE OF WETLAND, AND TO FLOOD 1,775 LINEAR FEET OF STREAM CHANNEL AND 0.282 ACRE OF WETLAND, ALONG UNNAMED TRIBUTARIES TO WHITE OAK CREEK, IN THE CAPE FEAR RIVER BASIN, ASSOCIATED WITH THE CONSTRUCTION OF HERITAGE POINT SUBDIVISION, IN CHATHAM COUNTY, NORTH CAROLINA.

This public notice modifies the previous public notice for this project, dated November 7, 2003. Following the issuance of the first public notice, an onsite review of the project resulted in a modification to the boundaries of wetlands on the property. A final wetland delineation has now been approved by the Corps of Engineers. Additionally, the onsite review revealed that two of the proposed impacts, a driveway crossing and a road crossing, have already been constructed. These impacts have not been removed. This public notice does not imply, on the part of the Corps of Engineers or other agencies, either a favorable or unfavorable opinion of the work performed. This notice is issued to solicit comments regarding the factors on which a final decision will be based. Further enforcement action, including possible legal action, has been suspended pending the outcome of this consideration.

The following description of the work is taken from data provided by the applicant and from observations made during site visits by representatives of the Corps of Engineers. Plans submitted with the application show the proposed construction of two recreational ponds, one driveway crossings, one road crossing, and a sewer line crossing within tributaries to White Oak Creek, located north of U.S. Highway 64, approximately 1.0 mile west of N.C. Highway 751, in Chatham County, North Carolina.

Both ponds are proposed to be constructed with earthen dams, each measuring 14.9 feet in height. Both ponds have been designed with concrete emergency overflow spillways and primary spillways capable of passing the 100-year storm flow. The western-most pond, identified in the plans as Pond # 1, is proposed to be 3.0 acres in size and has been designed with a capacity of 22 acre-feet of water at normal pool. Construction of the pond would result in the placement of fill material into 65 linear feet of stream channel for the dam, and the flooding of 690 linear feet of stream channel and 0.273 acre of forested wetland. Pond # 2, located on the eastern portion of the tract, is proposed to be 3.7 acres in size and has been designed with a capacity of 27 acre-feet of water at normal pool, and would result in the placement of fill material

into 85 linear feet of stream channel for the dam, and the flooding of 1,085 linear feet of stream channel and 0.009 acre of wetlands. The proposed ponds are being constructed to serve as recreational amenities to the single-family residences within the subdivision. In addition to the ponds, the proposed plans show the installation of one road crossing, impacting 0.119 acre of wetlands, one driveway crossing, impacting 18 linear feet of stream channel, and one sewer line crossings, temporarily impacting of 0.001 acre of wetlands. The total proposed impact associated with the subdivision is 1,943 linear feet of stream channel and 0.402 acre of wetlands. Plans showing the work are included with this public notice.

The applicant proposes mitigation for impacts to stream channels and wetlands associated with the project by providing payment into the North Carolina Ecosystem Enhancement Program for the restoration of 1,341 linear feet of stream channel and 0.5 acre of wetlands. In addition, the applicant proposes to preserve 1,500 linear feet of stream buffer on site. The proposed preservation areas are depicted on the attached plans.

The State of North Carolina will review this public notice to determine the need for the applicant to obtain any required State authorization. No Department of the Army (DA) permit will be issued until the coordinated State viewpoint on the proposal has been received and reviewed by this agency, nor will a DA permit be issued until the North Carolina Division of Water Quality (NCDWQ) has determined the applicability of a Water Quality Certificate as required by PL 92-500.

This application is being considered pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344). Any person may request, in writing within the comment period specified in the notice, that a public hearing be held to consider this application. Requests for public hearing shall state, with particularity, the reasons for holding a public hearing.

The District Engineer has consulted the latest published version of the National Register of Historic Places for the presence or absence of registered properties, or properties listed as being eligible for inclusion therein. Based on the best available evidence, it has been determined that no sites within the vicinity of the project are registered or listed as being eligible for inclusion in the Register. Examination of the National Register of Historic Places constitutes the extent of cultural resource investigations by the District Engineer, and he is otherwise unaware of the presence of other such resources. Presently, unknown archeological, scientific, prehistorical, or historical data may be lost or destroyed by work under the requested permit.

The District Engineer, based on available information, is not aware that the proposed activity will affect species, or their critical habitat, designated as endangered or threatened pursuant to the Endangered Species Act of 1973.

The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest. Evaluation of the probable impacts that the proposed activity may have on the public interest requires a careful weighing of all those factors, which become relevant in each particular

case. The benefits, which reasonably may be expected to accrue from the proposal, must be balanced against its reasonably foreseeable detriments. The decision whether to authorize a proposal, and if so the conditions under which it will be allowed to occur, are therefore determined by the outcome of the general balancing process. That decision should reflect the national concern for both protection and utilization of important resources. All factors that may be relevant to the proposal must be considered including the cumulative effects thereof. Among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards and flood plain values (in accordance with Executive Order 11988), land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people.

For activities involving the placement of dredged or fill materials in waters of the United States, a permit will be denied if the discharge that would be authorized by such permit would not comply with the Environmental Protection Agency's 404(b)(1) guidelines. Subject to the preceding sentence and any other applicable guidelines or criteria, a permit will be granted unless the District Engineer determines that it would be contrary to the public interest.

The Corps of Engineers is soliciting comments from the public; Federal, State and local agencies and officials; Indian Tribes and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment (EA) and/or an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA). Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

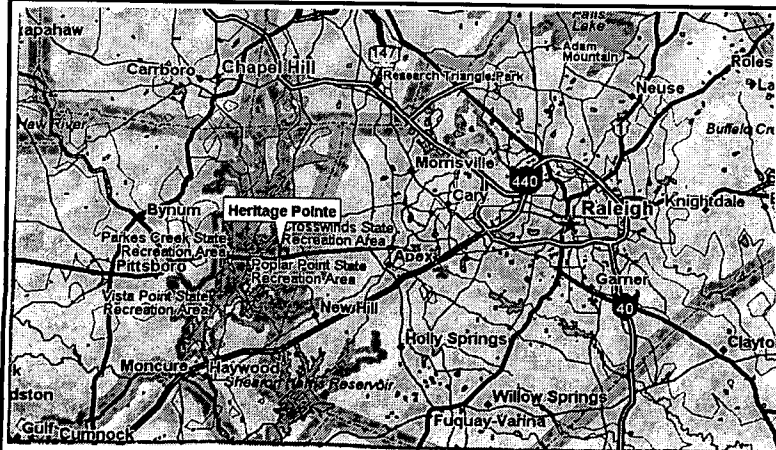
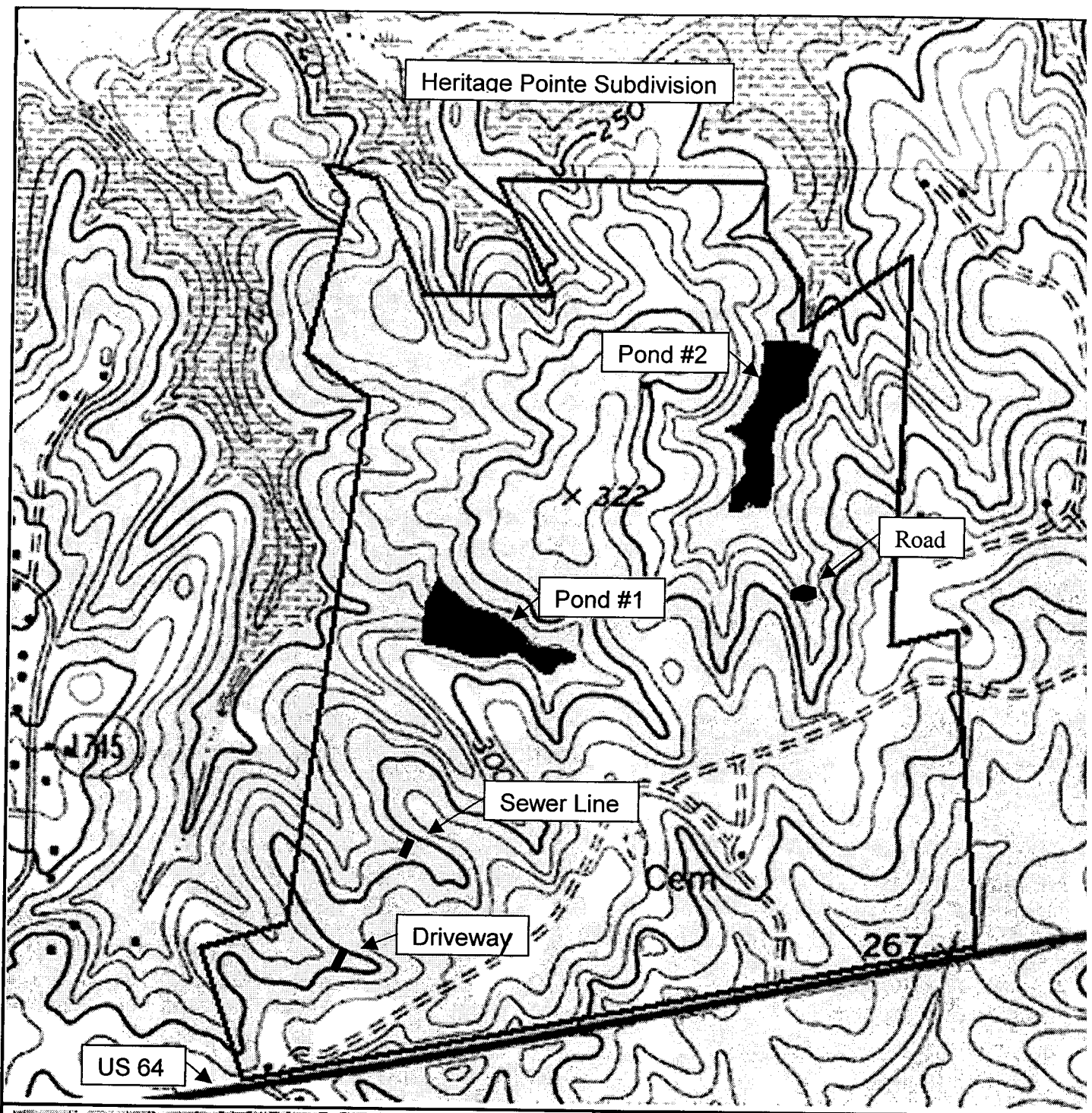
Generally, the decision whether to issue this Department of the Army (DA) permit modification will not be made until the North Carolina Division of Water Quality (NCDWQ) issues, denies, or waives State certification required by Section 401 of the Clean Water Act. The NCDWQ considers whether or not the proposed activity will comply with Sections 301, 302, 306, and 307 of the Clean Water Act. The application and this public notice for the Department of the Army (DA) permit serves as application to the NCDWQ for certification.

Additional information regarding the Clean Water Act certification may be reviewed at the offices of the Wetlands /401 Unit, North Carolina DENR, Division of Water Quality, 2321 Crabtree Boulevard, Raleigh, North Carolina. Copies of such materials will be furnished to any person requesting copies upon payment of reproduction costs.

All persons desiring to make comments regarding the application for Clean Water Act certification should do so in writing delivered to the North Carolina Division of Water Quality

(NCDWQ), Wetlands/401 Unit, 1650 Mail Service Center, Raleigh, North Carolina, 27699-1650, on or before April 12, 2004, Attention: Mr. John Dorney.

Written comments pertinent to the proposed work, as outlined above, will be received in this office, Attention: Mr. Todd Tugwell, until 4:15 p.m., April 12, 2004, or telephone (919) 876-8441, extension 26.



Heritage Point Subdivision - Location Map

Sheet 1 of 11

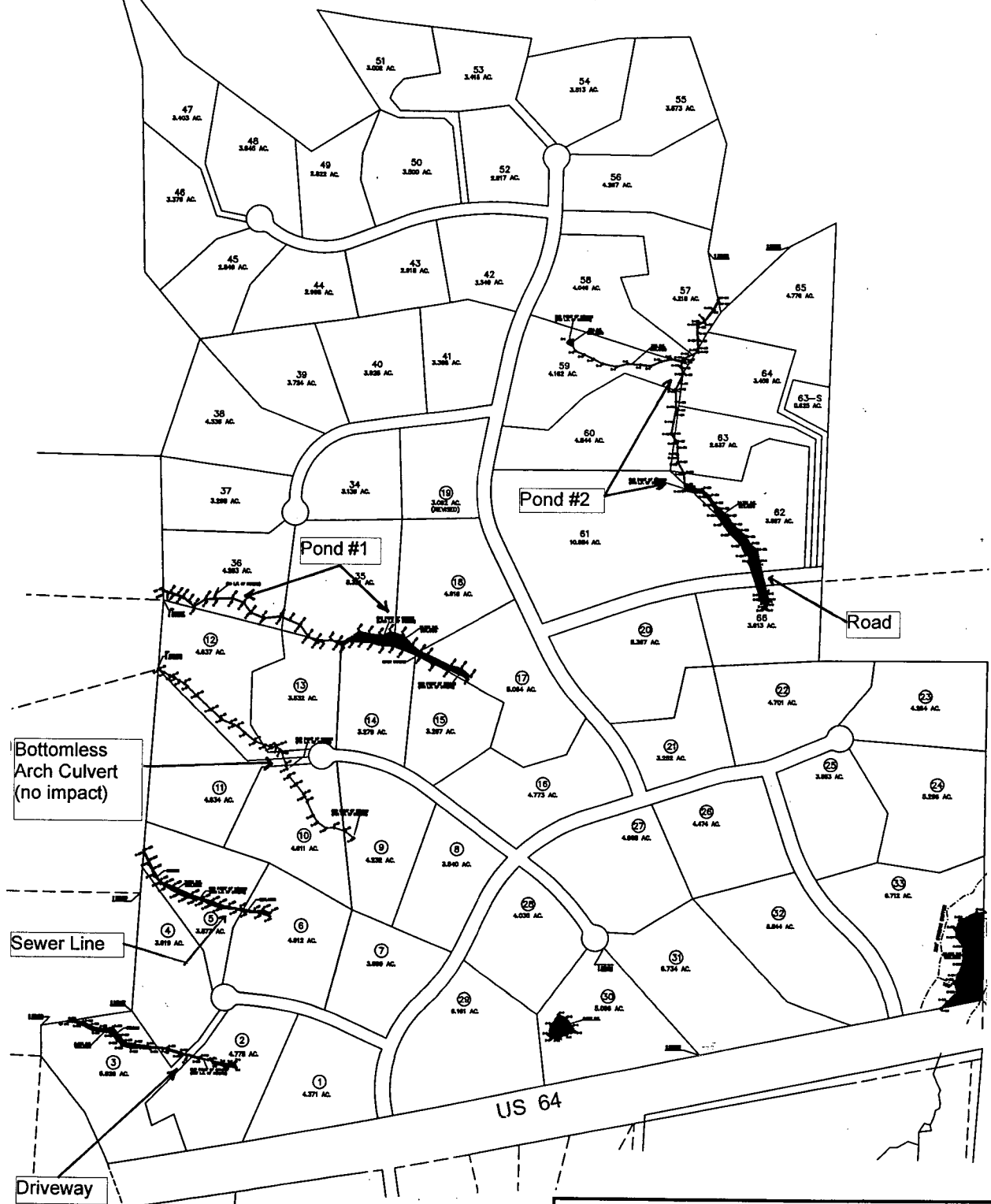
Applicant: Chatham Development, LLC
 Mr. Patrick O'Neal
 211 Chancellors Ridge Drive
 Durham, NC 27713

County: Chatham

Water Body: Unnamed Tributaries to White Oak
 Creek, Cape Fear River Basin

Date: March 25, 2004

Heritage Point Subdivision



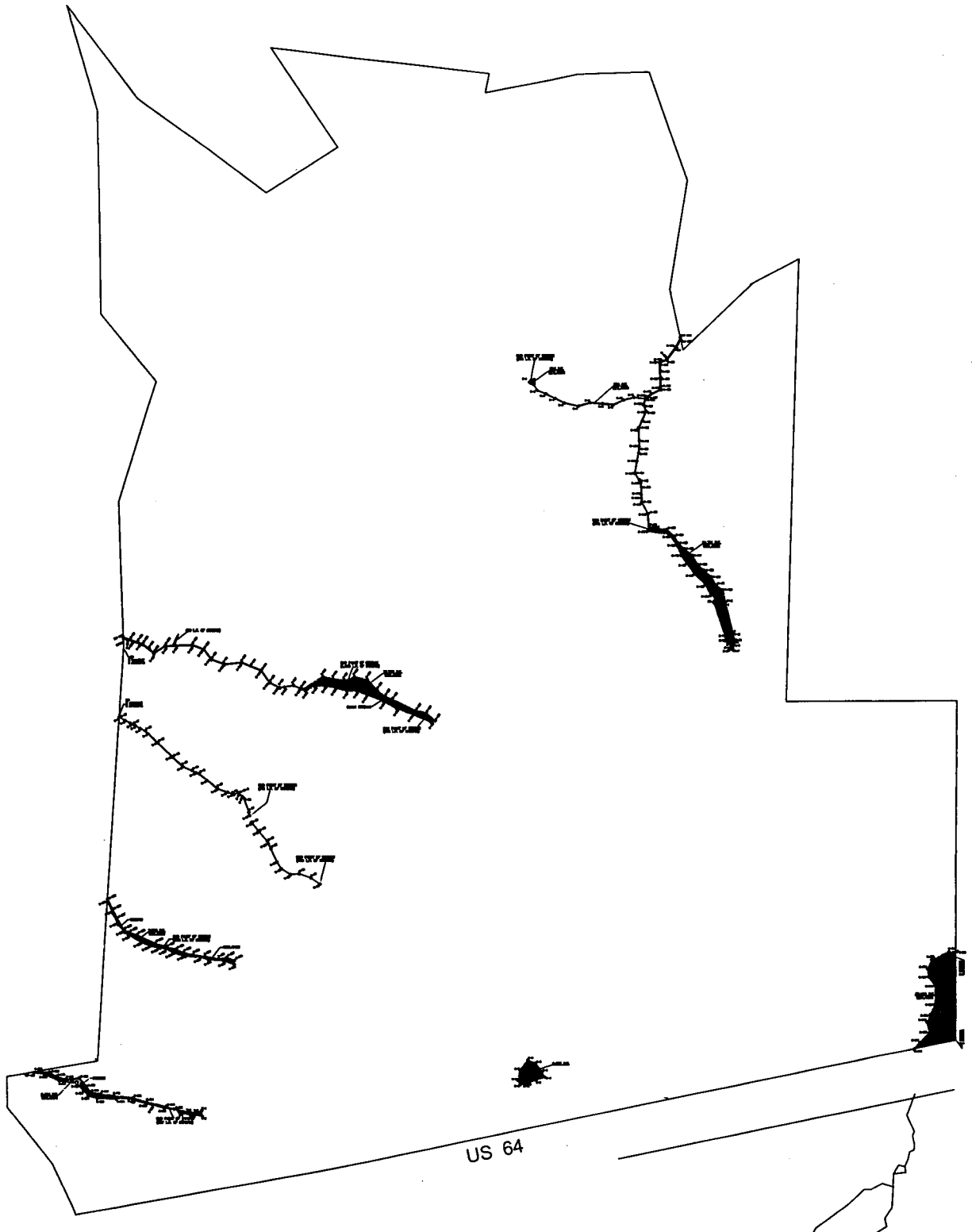
Heritage Point – Plan View

Sheet 2 of 11

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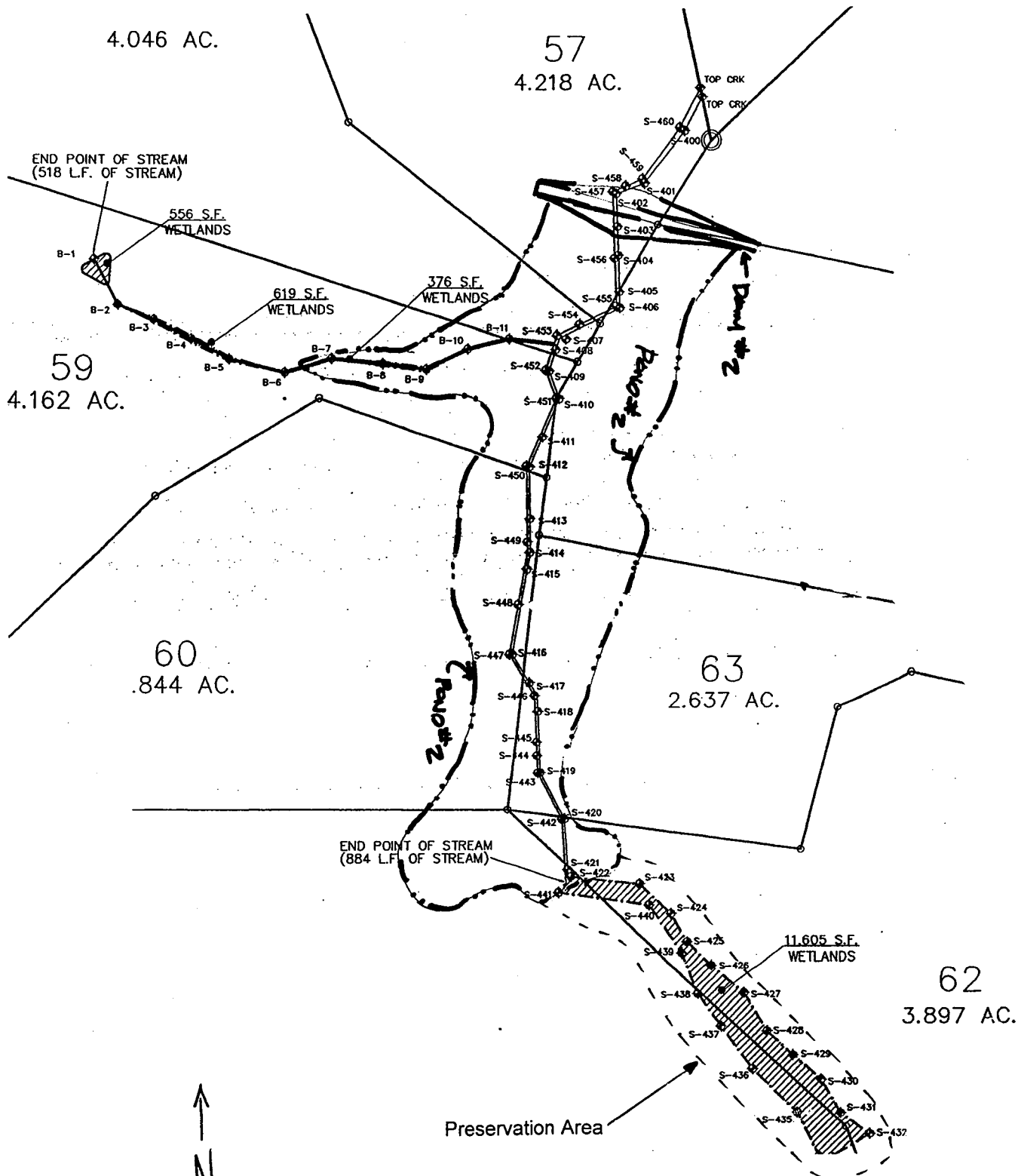
Heritage Point – Delineation

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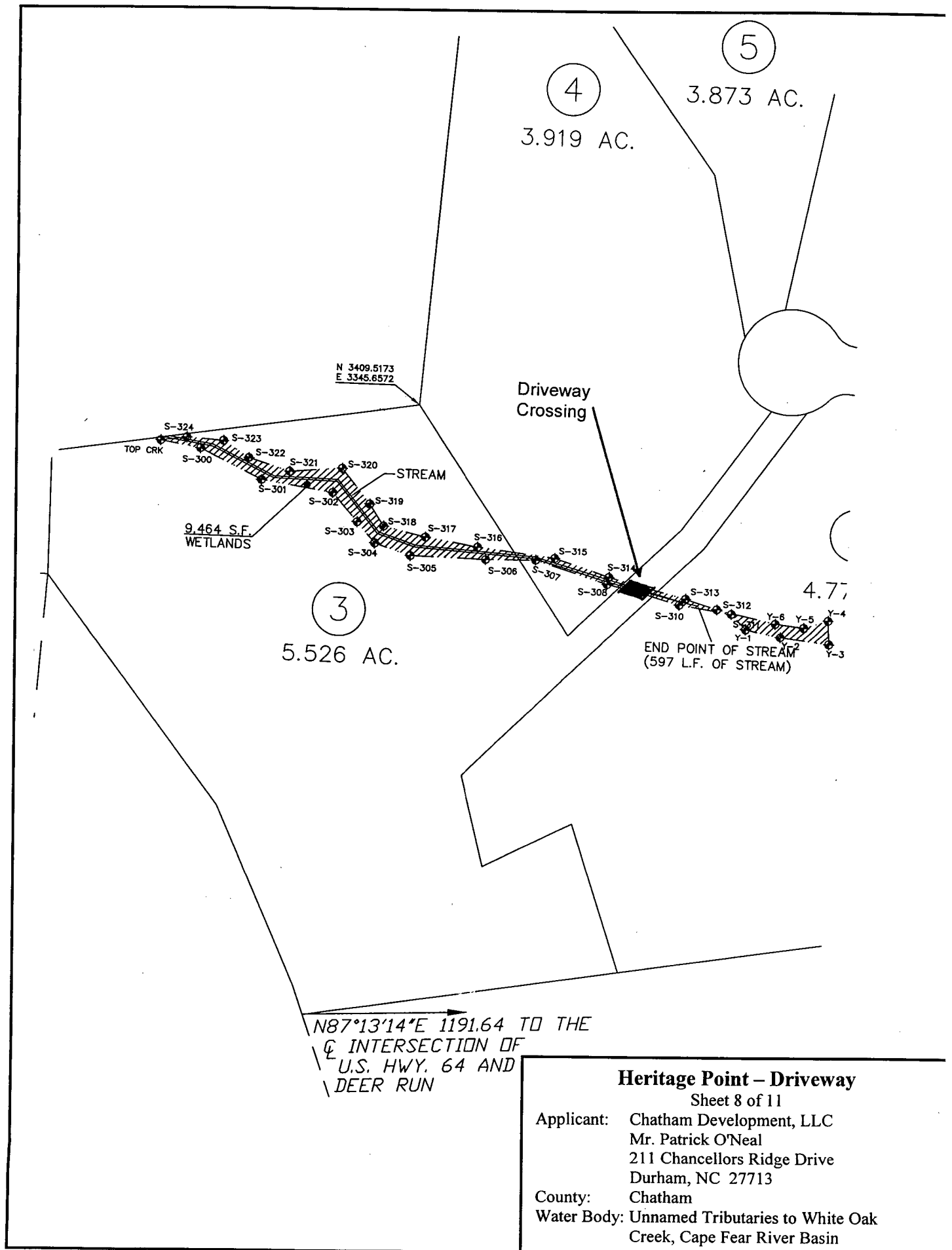
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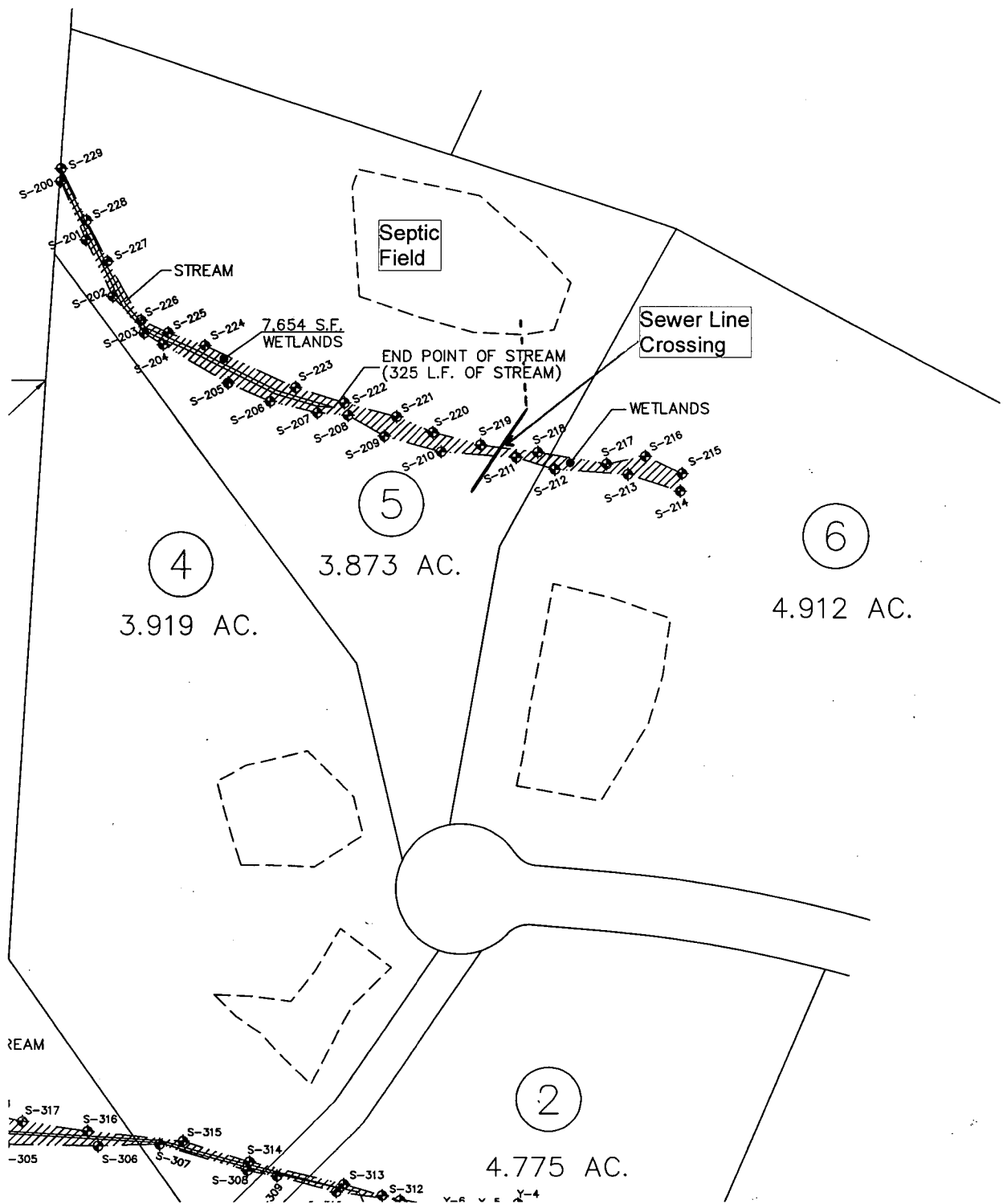
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Heritage Point - Pond #2
 Sheet 6 of 11
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Heritage Point – Sewer Line

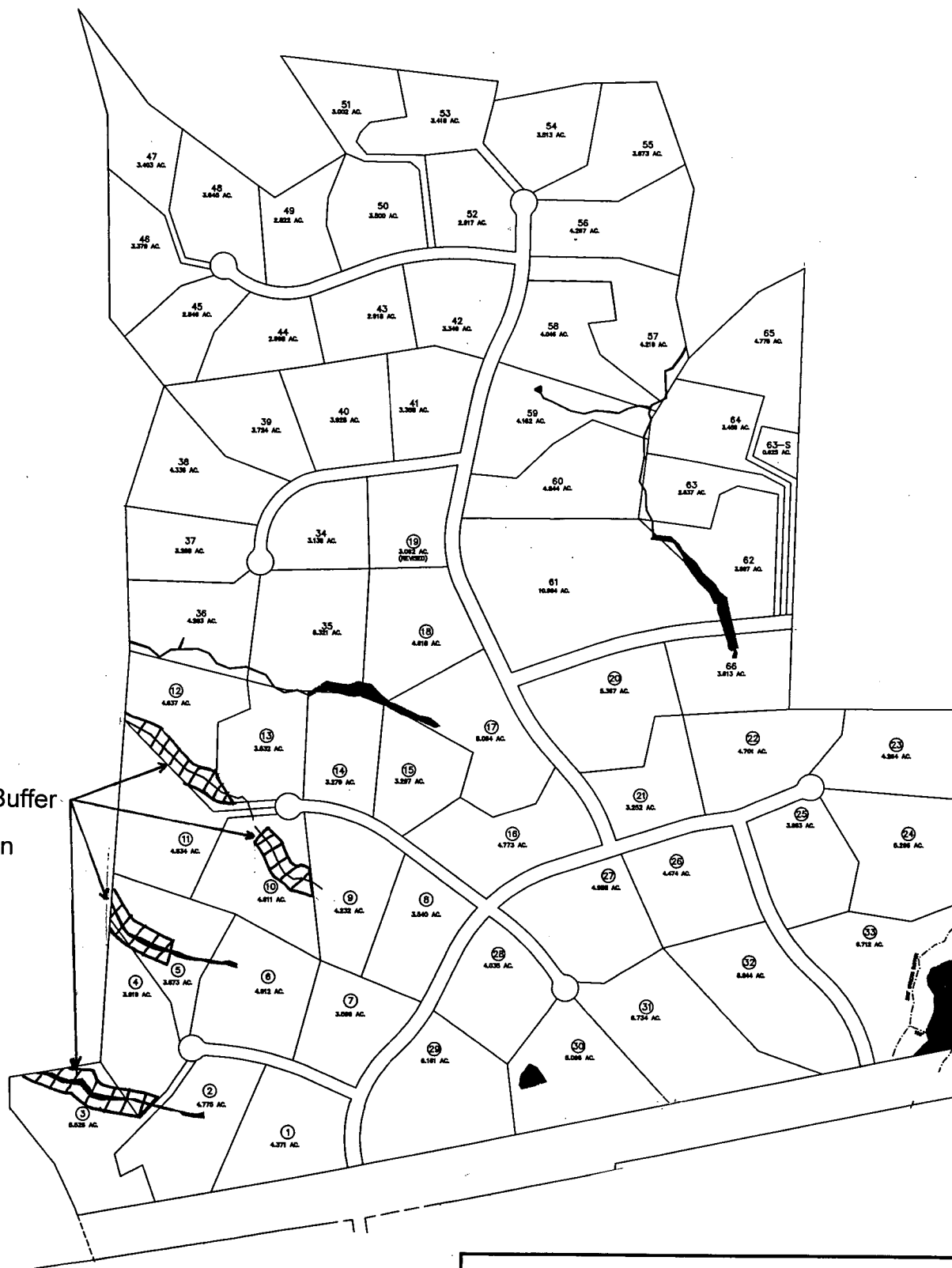
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Proposed Buffer
Preservation



Heritage Point – Preservation Areas

Sheet 11 of 11

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